
5

IN THE
UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 7887

NORTHERN PACIFIC RAILWAY COMPANY,
a corporation,

Appellant and Cross-Appellee,

vs.

THE SAUK RIVER LUMBER COMPANY, a
corporation,

Appellee and Cross-Appellant.

APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT OF
WASHINGTON, NORTHERN DIVISION

APPENDIX

**Washington Statutes in Briefs of Appellant and
Cross-Appellee**

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FILED

THE ARGUS PRESS • SEATTLE

FEB 20 1936

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Ch. 110, Laws of 1921, §§ 1 to 6 are Remington's Revised Statutes, §§ 10434 to 10439, inc.

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As requested we submit herewith a copy of all sections of the Washington statutes referred to in the several briefs with section numbers as carried in Remington's Revised Statutes referred to in the brief, and also carried under the same section numbers in Remington's Compiled Statutes.

§ 457. *Interest on judgments.* Judgments hereafter rendered founded on written contracts, providing for the payment of interest until paid at a specified rate,

shall bear interest at the rate specified in such contracts, not in any case, however, to exceed ten per cent per annum: Provided, that said interest rate is set forth in the judgment; and all other judgments shall bear interest at the rate of six per centum per annum from date of entry thereof. (L. '99, p. 129, § 6, Cf., 2 H. C., § 459; L. '95, p. 350, § 4.)

§ 5841. *Charges in excess of published rates to be refunded.* Any corporation, partnership or individual who furnishes the public any goods, wares, merchandise, pledge, security, insurance or transportation of which the price, rate or tariff is by law required to be published, shall, when any price, rate or tariff is charged in excess of the existing and established price, rate or tariff, refund to the person, partnership or corporation so overcharged, or to the assignee of such claim, the amount of such overcharge, and on failure so to do, the claim for such overcharge shall bear interest at the rate of eight per cent per annum until paid. (L. '07, p. 407, § 1.)

§ 7299. *Interest rate—Loan defined.* Every loan or forbearance of money, goods, or thing in action shall bear interest at the rate of six per centum per annum where no different rate is agreed to in writing between the parties. The discounting of commercial paper, where the borrower makes himself liable as maker, guarantor or indorser, shall be considered as a loan for the purposes of this chapter. (L. '99, p. 128, § 1. Cf. L. '95, p. 349, § 1.)

§ 10345. *Charges—Duties of common carriers.* All charges made for any service rendered or to be ren-

dered in the transportation of persons or property, or in connection therewith, by any common carrier, or by any two or more common carriers, shall be just, fair, reasonable and sufficient.

Every common carrier shall construct, furnish, maintain and provide safe, adequate and sufficient service facilities, trackage, sidings, railroad connections, industrial and commercial spurs and equipment to enable it to promptly, expeditiously, safely and properly receive, transport and deliver all persons or property offered to or received by it for transportation, and to promote the safety, health, comfort and convenience of its patrons, employees and the public.

All rules and regulations issued by any common carrier affecting or pertaining to the transportation of persons or property shall be just and reasonable. (L. '11, p. 546, § 9.)

§ 10350. *Tariff schedules—Publication.* Every common carrier shall file with the commission and shall print and keep open to the public inspection schedules showing the rates, fares, charges and classification for the transportation of persons and property within the state between each point upon its route and all other points thereon; and between each point upon its route and all points upon every route leased, operated or controlled by it; and between each point on its route or upon any route leased, operated or controlled by it and all points upon the route of any other common carrier, whenever a through route and joint rate shall have been established or ordered between any two such points. If no joint rate over a through route has been established, the several carriers in such

through route shall file, print and keep open to the public inspection, as aforesaid, the separately established rates, fares, charges and classifications, applied to the through transportation. The schedules printed as aforesaid, shall plainly state the places between which property and persons will be carried, and shall also contain classification of passengers or property in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the commission may require to be stated, all privileges or facilities granted or allowed, and any rules and regulations which may in any wise change, affect, or determine any part, or the aggregate of, such aforesaid rates, fares and charges, or the value of the service rendered to the passenger, shipper or consignee. Such schedule shall be plainly printed in large type, and a copy thereof shall be kept by every such carrier readily accessible to and for inspection by the public in every station or office of such carrier where passengers or property are respectively received for transportation, when such station or office is in charge of any agent, and in every station or office of such carrier where passenger tickets for transportation or tickets covering sleeping or parlor cars or other train accommodation are sold or bills of lading or receipts for property are issued. All or any of such schedules kept as aforesaid shall be immediately produced by such carrier for inspection upon the demand of any person. A notice printed in bold type and stating that such schedules are on file with the agent and open to inspection by any person and that the agent will assist any such person to determine from

such schedules any transportation rates or fares, or rules and regulations which are in force shall be kept posted by the carrier in two public and conspicuous places in every such station or office. The form of every such schedule shall be prescribed by the commission and shall conform in the case of railroad companies as nearly as may be to the form of schedules required by the interstate commerce commission under the act of Congress entitled "An act to regulate commerce," approved February 4th, 1887, and the acts amendatory thereof and supplementary thereto.

The commission shall have power, from time to time, in its discretion, to determine and prescribe by order such changes in the form of such schedules as may be found expedient, and to modify the requirements of this section in respect to publishing, posting and filing of schedules either in particular instances or by general rule or order applicable to special or peculiar circumstances or conditions.

The commission may, in its discretion, suspend the operation of this section in whole or in part as applied to vessels engaged in jobbing business not operating on regular routes. (L. '11, p. 548, § 14.)

§ 10351. *Changes in schedule — Notice required.* Unless the commission otherwise orders no change shall be made in any classification, rate, fare, charge, rule or regulation which shall have been filed and published by a common carrier in compliance with the preceding section, except after thirty days' notice to the commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force, and the time

when the changed rate, classification, fare or charge will go into effect; and all proposed changes shall be shown by printing, filing and publishing new schedules or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. The commission, for good cause shown, may by order allow changes in rates without requiring the thirty days' notice and the publication herein provided for. When any change is made in any rate, fare, charge, classification, rule or regulation, the effect of which is to increase any rate, fare or charge then existing, attention shall be directed to such increase by some character on the copy filed with the commission immediately preceding or following the item in such schedule, such character to be designated by the commission. (L. '11, p. 550, § 15.)

§ 10354. *Published Rates to be Charged—Free or Reduced Transportation.*

No common carrier shall charge, demand, collect or receive a greater or less or different compensation for transportation of persons or property, or for any service in connection therewith, than the rates, fares and charges applicable to such transportation as specified in its schedules filed and in effect at the time; nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified excepting upon order of the commission as hereinafter provided, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property except such as are regularly and uniformly extended to all persons and corporations under like circumstances.

No common carrier shall, directly or indirectly, issue or give any free ticket, free pass or free or reduced transportation for passengers between points within this state, except its employees and their families, its officers, agents, surgeons, physicians and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals, charitable and eleemosynary institutions and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute and homeless persons and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the national homes or state homes for disabled volunteer soldiers and of soldiers' and sailors' homes, including those about to enter and those returning home after discharge; to necessary caretakers of livestock, poultry, milk and fruit; to employees of sleeping-car companies, express companies, and to linemen of telegraph and telephone companies; to railway mail service employees, postoffice inspectors, customs inspectors and immigration inspectors; to newsboys on trains; baggage agents, witnesses attending any legal investigation in which the common carrier is interested; to persons injured in accidents or wrecks and physicians and nurses attending such persons; to the National Guard of Washington when on official duty, and students going to and returning from state institutions of learning: Provided, that this provision shall not be construed to prohibit the interchange of passes for the officers, attorneys, agents and employees and their families, of railroad companies, steamboat companies,

express companies and sleeping-car companies with other railroad companies, steamboat companies, express companies and sleeping-car companies, nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation: and provided, further, that this provision shall not be construed to prohibit the exchange of passes or franks for the officers, attorneys, agents, employees, and their families of such telegraph, telephone and cable lines, and the officers, attorneys, agents, employees, and their families of other telegraph, telephone or cable lines, or with railroad companies, express companies or sleeping-car companies: Provided, further, that the term "employee" as used in this section shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed or dying in the employment of a carrier, those entering or leaving its service and ex-employees traveling for the purpose of entering the service of any such common carrier; and the term "families" as used in this section shall include the families of those persons named in this proviso, also the families of persons killed and the widows during widowhood and minor children during minority of persons who died while in the service of any such common carrier: And provided, further, that nothing herein contained shall prevent the issuance of mileage, commutation tickets or excursion passenger tickets: And provided, further, that nothing in this section shall be construed to prevent the issuance

of free or reduced transportation by any street rail road company for mail carriers or policemen or members of fire departments, city officers, and employees when engaged in the performance of their duties as such city employees.

Common carriers subject to the provisions of this act may carry, store or handle, free or at reduced rates, property for the United States, state, county or municipal governments, or for charitable purposes, or to or from fairs and exhibitions for exhibition thereat, and may carry, store or handle, free or at reduced rates, the household goods and personal effects of its employees and those entering or leaving its service and those killed or dying while in its service.

Nothing in this act shall be construed to prohibit the making of a special contract providing for the mutual exchange of service between any railroad company and any telegraph or telephone company, where the line of such telegraph or telephone company is situated upon or along the railroad right of way and used by both such companies. (L. '11, p. 551, § 18.) (Subsequently amended by ch. 96, L. '29, p. 185.)

§ 10357. *Unreasonable preference.* No common carrier shall make or give any undue or unreasonable preference or advantage to any person or corporation or to any locality or to any particular description of traffic in any respect whatsoever, or subject any particular person or corporation or locality or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. (L. '11, p. 555, § 21.)

§ 10389. *Charges and services to be fixed by commission.* Whenever the commission shall find, after a hearing had upon its own motion or upon complaint, as herein provided, that the rates, fares or charges demanded, exacted, charged or collected by any common carrier for the transportation of persons or property within the state or in connection therewith, or that the regulations or practices of such common carrier affecting such rates are unjust, unreasonable, unjustly discriminatory, or unduly preferential, or in any wise in violation of the provisions of law, or that such rates, fares or charges are insufficient to yield a reasonable compensation for the service rendered, the commission shall determine the just, reasonable or sufficient rates, fares or charges, regulations or practices to be thereafter observed and enforced and shall fix the same by order as hereinafter provided.

Whenever the commission shall find, after such hearing, that the rules, regulations, practices, equipment, appliances, facilities or service of any such common carrier in respect to the transportation of persons or property are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine the just, reasonable, safe, adequate, sufficient and proper rules, regulations, practices, equipment, appliances, facilities or service to be observed, furnished, constructed or enforced and be used in the transportation of persons and property by such common carrier, and fix the same by its order or rule as hereinafter provided. (L. '11, p. 571, § 53.)

§ 10423. *Hearings, orders and record.* At the time fixed for the hearing mentioned in the preceding section, the complainant and the person or corporation complained of shall be entitled to be heard and introduce such evidence as he or it may desire. The Commission shall issue process to enforce the attendance of all necessary witnesses. At the conclusion of such hearing the commission shall make and render findings concerning the subject matter and facts inquired into and enter its order based thereon. A copy of such order, certified under the seal of the commission, shall be served upon the person or corporation complained of, or his or its attorney, which order shall, of its own force, take effect and become operative twenty days after the service thereof, except as otherwise provided. Where an order cannot, in the judgment of the commission, be complied with within twenty days, the commission may prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may, on application and for good cause shown, extend the time for compliance fixed in its order. A full and complete record of all proceedings had before the commission, or any member thereof, on any formal hearing had, and all testimony shall be taken down by a stenographer appointed by the commission, and the parties shall be entitled to be heard in person or by attorney. In case of an action to review any order of the commission, a transcript of such testimony, together with all exhibits introduced, and of the record and proceedings in the cause, shall constitute the record of the commission. (L. '11, p. 593, § 81.)

§ 10428. *Review.* Any complainant or any public service affected by any order of the commission, and deeming it to be contrary to law, may, within thirty days after the service of the order upon him, or it, apply to the superior court of the county in which such proceeding was instituted for a writ of review, for the purpose of having its reasonableness and lawfulness inquired into and determined. Such writ shall be made returnable not later than thirty days from and after the date of the issuance thereof, unless upon notice to all parties affected a further time be fixed by the court, and shall direct the commission to certify its record in the case to the court. On such return day the cause shall be heard by the court, unless for good cause shown the same be continued. Said cause shall be heard by the court without the intervention of a jury on the evidence and exhibits introduced before the commission and certified to by it. Upon such hearing the superior court shall enter judgment either affirming or setting aside the order of the commission under review. In case said order is reversed by reason of the commission failing to receive testimony properly proffered, the court shall remand the cause to the commission, with instructions to receive the testimony so proffered and rejected, and enter a new order based upon the evidence theretofore taken, and such as it is directed to receive. The court may, in its discretion, remand any cause which is reversed by it to the commission for further action. (L. '11, p. 596, § 86.)

§ 10430. *Appeal to the Supreme Court.* The commission, any public service company or any complainant may, within twenty days after the entry of judgment in the superior court in any action of review, prosecute an appeal to the supreme court of the state of Washington. The appellant shall have fifty days after the entry of such judgment in which to serve and file his opening brief, and the respondent shall have thirty days after the service of such opening brief in which to answer the same. The appellant shall have twenty days after the service of respondent's brief in which to reply to the same. After the filing of such brief, or the expiration of the time for filing briefs, the cause shall be assigned for hearing at the earliest motion day of the court, or at such other time as the court shall fix, and the clerk of the court shall notify the attorneys for the respective parties of the date set for the hearing in time to permit the parties to participate in the hearing. Such appeal shall be taken by giving a notice of the appeal in open court at the time of the rendition of judgment, or by the service and filing of a notice of appeal within twenty days from and after the entry of the judgment.

The original transcript of the record and testimony filed in the superior court in any action to review an order of the commission, together with a transcript of the proceedings in the superior court, shall constitute the record on appeal to the supreme court.

No appeal shall be effective, when taken by a public service company or a complainant, unless a cost bond on appeal in the sum of two hundred dollars

(§200) shall be filed within five days after the service of the notice of appeal.

The superior court may, in its discretion, suspend its judgment pending the hearing in the supreme court, upon the filing of a bond, with a good and sufficient surety, conditioned as provided for bonds upon actions for review, or upon such other or further terms and conditions as it may deem proper. The general laws relating to appeals to the supreme court shall, so far as applicable and not in conflict with the provisions of this act, apply to appeals taken under the provisions of this act. (L. '11, p. 598, § 88.)

§ 10433. *Overcharge.* When complaint has been made to the commission concerning the reasonableness of any rate, fare, toll, rental or charge for any service performed by any public service company, and the same has been investigated by the commission, and the commission shall determine that the public service company has charged an excessive or exorbitant amount for such service, the commission may order that the public service company pay to the complainant the amount of the overcharge so found, with interest from the date of collection.

If the public service company does not comply with the order for the payment of the overcharge within the time limited in such order, suit may be instituted in any court of competent jurisdiction to recover the same, and in such suit the findings and order of the commission shall be prima facie evidence of the facts therein stated. If the complainant shall prevail in such action, he shall be allowed a reasonable attorney's

fee, to be fixed and collected as part of the costs of the suit. All complaints concerning overcharges shall be filed with the commission within two years from the time the cause of action accrues, and the petition for the enforcement of the order shall be filed in the court within one year from the date of the order of the commission. (L. '11, p. 600, § 91.) (Subsequently amended by Ch. 148, L. '33, p. 521.)

§ 10434. *Refunds and overcharges—Determination by director of public works.* The director of public works shall have power and it shall be his duty, upon complaint in writing being made to him, to determine the amount of overcharge made and refund due in all cases where any public service company, as defined in this chapter, charges an amount for any service rendered in excess of the lawful rate in force at the time such charge was made, or which may thereafter be declared to be the legal rate which should have been applied to the service rendered, and to determine to whom the overcharge should be paid: Provided, that this act shall not apply to controversies arising in relation to contracts in existence prior to the taking effect of this chapter. (L. '21, p. 336, § 1.) (Subsequently repealed by § 2, ch. 148, L. '33, p. 522.)

§ 10435. *Judgment for overcharge—Collection.* Upon determining the amount of overcharge due from any such public service company, the director of public works may, if he deem it necessary to insure the prompt payment of the same to him, render judgment against such public service company for the amount of such overcharge. From and after the time that a

transcript of said judgment is filed with and recorded and indexed by the county auditor as instruments relating to real and personal property are filed, recorded and indexed, it shall be a lien against all real and personal property of such public service company located in the county in which such transcript is filed, recorded and indexed. Such judgment may be enforced by execution and sale through the sheriff of any county in which is found any real or personal property belonging to such public service company, said execution to be delivered to the sheriff by the director of public works and the execution to be levied and the sale made by the sheriff in the same manner as levies and sales are made on judgments of the superior court. (L. '21, p. 336, § 2.) (Subsequently repealed by § 2, ch. 148, L. '33, p. 522.)

§ 10436. *Payment of refunds collected.* All refunds collected by the director of public works under this act shall immediately be paid to the person, firm or corporation entitled thereto less a fee of ten per cent on the amount collected, which shall be charged by the director of public works, deducted by him and paid into the public service revolving fund of the state treasury. (L. '21, p. 337, § 3.) (Subsequently repealed by § 2, ch. 148, L. '33, p. 522.)

§ 10437. *Unclaimed refunds.* All refunds collected by the director of public works and which at the expiration of two years are unclaimed, or which he is unable to deliver to the person entitled thereto, shall be paid by the director of public works into the public service revolving fund of the state treasury. (L. '21,

p. 337, § 4.) (Subsequently repealed by § 2, ch. 148, L. '33, p. 522.)

§ 10438. *Rules and regulations.* The director of public works shall have power to make rules and regulations for carrying out the provisions of this act. (L. '21, p. 337, § 5.) (Subsequently repealed by § 2, ch. 148, L. '33, p. 522.)

§ 10439. *Hearings and procedure.* Hearings to determine the amount of any refund due under this act shall be held in the same manner, the same procedure followed, and judgments and orders subject to review and appeal in the courts as is provided for hearings, procedure, reviews, and appeals in matters before the public service commission of Washington under the provisions of this chapter. (L. '21, p. 337, § 6.) (Subsequently repealed by § 2, ch. 148, L. '33, p. 522.)

§ 10442. *Summary proceedings.* Whenever the commission shall be of opinion that any public service company is failing or omitting, or about to fail or omit, to do anything required of it by law, or by order, direction or requirement of the commission, or is doing anything, or about to do anything, or permitting anything, or about to permit anything to be done contrary to or in violation of law or of any order, direction or requirement of the commission authorized by this act, it shall direct the attorney general to commence an action or proceeding in the superior court of the state of Washington for Thurston county or in the superior court of any county in which such company may do business, in the name of the state of Washing-

ton on the relation of the commission, for the purpose of having such violations or threatened violations stopped and prevented, either by mandamus or injunction. The attorney general shall thereupon begin such action or proceeding by petition to such superior court, alleging the violation complained of, and praying for appropriate relief by way of mandamus or injunction. It shall thereupon be the duty of the court to specify a time, not exceeding twenty days after the service of the copy of the petition, within which the public service company complained of must answer the petition. In case of default in answer or after answer, the court shall immediately inquire into the facts and circumstances in such manner as the court shall direct, without other or formal pleadings, and without respect to any technical requirement. Such persons or corporations as the court may deem necessary or proper to be joined as parties in order to make its judgment, order or writ effective, may be joined as parties. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that the writ of mandamus or injunction, or both, issue as prayed for in the petition, or in such other modified form as the court may determine will afford appropriate relief. An appeal may be taken to the supreme court from such final judgment in the same manner and with the same effect as appeals from judgments of the superior court in actions to review orders of the commission. All provisions of this act relating to the time of appeal, the manner of perfecting the same, the filing of briefs, hearings and super-sedeas, shall apply to appeals to the supreme court

under the provisions of this section. (L. '11, p. 605, § 93.)

§ 10443. *Penalties for violation of act or orders.* Every public service company, and all officers, agents and employees of any public service company, shall obey, observe and comply with every order, rule, direction or requirement made by the commission under authority of this act, so long as the same shall be and remain in force. Any public service company which shall violate or fail to comply with any provisions of this act, or which fails, omits or neglects to obey, observe or comply with any order, rule, or any direction, demand or requirement of the commission, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense. Every violation of any such order, direction or requirement of this act shall be a separate and distinct offense, and in case of a continuing violation every day's continuance thereof shall be and be deemed to be a separate and distinct offense. (L. '11, p. 606, § 94.)

§ 10450. *Commission shall enforce laws.* It shall be the duty of the commission to enforce the provisions of this act and all other acts of this state affecting public service companies, the enforcement of which is not specifically vested in some other officer or tribunal. (L. '11, p. 608, § 101.)

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—
ADDENDA TO BRIEF OF APPELLEE AND
CROSS-APPELLANT
—

WASHINGTON STATUTES CITED
—

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FILED

MAR 2 - 1936

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R. R. S. Sec. 179 provides:

“Every action shall be prosecuted in the name of the real party in interest, except as is otherwise provided by law.”

R. R. S. Sec. 196 provides:

“The court may determine any controversy between parties before it when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the court shall cause them to be brought in.”

R. R. S. Sec. 259 provides:

“The defendant may demur to the complaint when it shall appear upon the face thereof either—

1. That the court has no jurisdiction of the

person of the defendant or of the subject matter of the action;

2. That the plaintiff has no legal capacity to sue; or
3. That there is another action pending between the same parties for the same cause; or
4. That there is a defect of parties, plaintiff or defendant; or
5. That several causes of action have been improperly united;
6. That the complaint does not state facts sufficient to constitute a cause of action;
7. That the action has not been commenced within the time limited by law."

R. R. S. Sec. 263 provides:

"If no objection be taken either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting always the objection that the court has no jurisdiction, or that the complaint does not state facts sufficient to constitute a cause of action, which objection can be made at any stage of the proceedings, either in the superior or supreme court."

R. R. S. Sec. 297 provides:

"Every material allegation of the complaint not controverted by the answer, and every material allegation of new matter in the answer not controverted by the reply, shall, for the purpose of action, be taken as true; but the allegation of new matter in a reply is to be deemed controverted by the adverse party, as

upon a direct denial or avoidance, as the case may require.”

R. R. S. Sec. 5509 provides:

“All moneys now in or that may be paid into the state treasury from any and all sources, except moneys received from taxes levied for specific purposes and excepting the several permanent and irreducible funds of the state, and the moneys derived therefrom, shall be paid into and become a part of the general fund of the state.”

R. R. S. Sec. 5510 provides:

“All salaries and other expenses heretofore required to be paid from any of the funds affected by the last section shall hereafter be paid from the state general fund.”

R. R. S. Sec. 10350 provides:

“Every common carrier shall file with the commission and shall print and keep open to the public inspection schedules showing the rates, fares, charges and classification for the transportation of persons and property within the state between each point upon its route and all other points thereon; and between each point upon its route and all points upon every route leased, operated or controlled by it; and between each point on its route or upon any route leased, operated or controlled by it and all points upon the route of any other common carrier, whenever a through route and joint rate shall have been established or ordered between any two such points. If no joint rate over a through route has been established, the several carriers in such through route shall file, print and keep open

to the public inspection, as aforesaid, the separately established rates, fares, charges and classifications, applied to the through transportation. The schedules printed as aforesaid, shall plainly state the places between which property and persons will be carried, and shall also contain classification of passengers or property in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the commission may require to be stated, all privileges or facilities granted or allowed, and any rules and regulations which may in any wise change, affect, or determine any part, or the aggregate of such aforesaid rates, fares and charges, or the value of the service rendered to the passenger, shipper or consignee. Such schedule shall be plainly printed in large type, and a copy thereof shall be kept by every such carrier readily accessible to and for inspection by the public in every station or office of such carrier where passengers or property are respectively received for transportation, when such station or office is in charge of any agent, and in every station or office of such carrier where passenger tickets for transportation or tickets covering sleeping or parlor cars or other train accommodation are sold or bills of lading or receipts for property are issued. All or any of such schedules kept as aforesaid shall be immediately produced by such carrier for inspection upon the demand of any person. A notice printed in bold type and stating that such schedules are on file with the agent and open to inspection by any person and that the agent will assist any such person to determine from such schedules any transportation rates or fares, or rules and regulations which are in force shall be kept posted by the

carrier in two public and conspicuous places in every such station or office. The form of every such schedule shall be prescribed by the commission and shall conform in the case of railroad companies as nearly as may be to the form of schedules required by the interstate commerce commission under the act of congress entitled "An act to regulate commerce," approved February 4th, 1887, and the acts amendatory thereof and supplementary thereto.

"The commission shall have power, from time to time, in its discretion, to determine and prescribe by order such changes in the form of such schedules as may be found expedient, and to modify the requirements of this section in respect to publishing, posting and filing of schedules either in particular instances or by general rule or order applicable to special or peculiar circumstances or conditions.

"The commission may, in its discretion, suspend the operation of this section in whole or in part as applied to vessels engaged in jobbing business not operating on regular routes."

R. R. S. Sec. 10354.

"No common carrier shall charge, demand, collect or receive a greater or less or different compensation for transportation of persons or property, or for any service in connection therewith, than the rates, fares and charges applicable to such transportation as specified in its schedules filed and in effect at the time; nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified excepting upon order of the commission as hereinafter provided, nor extend

to any shipper or person any privileges or facilities in the transportation of passengers or property except such as are regularly and uniformly extended to all persons and corporations under like circumstances. No common carrier shall, directly or indirectly, issue or give any free ticket, free pass or free or reduced transportation for passengers between points within this state, except its employees and their families, surgeons and physicians and their families, its officers, agents and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals, charitable and eleemosynary (eleemosynary) institutions and persons exclusively engaged in charitable and eleemosynary (eleemosynary) work; to indigent, destitute and homeless persons and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the national homes or state homes for disabled volunteer soldiers and of soldiers' and sailors' homes, including those about to enter and those returning home after discharge; to necessary caretakers of livestock, poultry, milk and fruit; to employees of sleeping car companies, express companies, and to linemen of telegraph and telephone companies; to railway mail service employees, postoffice inspectors, customs inspectors and immigration inspectors; to newsboys on trains; baggage agents, witnesses attending any legal investigation in which the common carrier is interested; to persons injured in accidents or wrecks and physicians and nurses attending such persons; to the National Guard of Washington when on official duty, and students going to and returning from the state institutions of learning; Provided, That this provision shall not be con-

strued to prohibit the interchange of passes for the officers, attorneys, agents and employees and their families, of railroad companies, steamboat companies, express companies and sleeping car companies with other railroad companies, steamboat companies, express companies and sleeping car companies, nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation: And provided, further, That this provision shall not be construed to prohibit the exchange of passes or franks for the officers, attorneys, agents, employees, and their families of such telegraph, telephone and cable lines, and the officers, attorneys, agents, employees, and their families of other telegraph, telephone or cable lines, or with railroad companies, express companies or sleeping car companies: Provided, further, That the term "employee" as used in this section shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier and the remains of a person killed or dying in the employment of a carrier, those entering or leaving its service and ex-employees traveling for the purpose of entering the service of any such common carrier; and the term 'families' as used in this section shall include the families of those persons named in this proviso, also the families of persons killed and the widows during widowhood and minor children during minority, of persons who died while in the service of any such common carrier: And provided, further, That nothing herein contained shall prevent the issuance of mileage, commutation tickets or excursion passenger tickets: And, provided, further, That nothing in this section shall be construed

to prevent the issuance of free or reduced transportation by any street railroad company for mail carriers, or policemen or members of fire departments, city officers, and employees when engaged in the performance of their duties as such city employees.

“Common carriers subject to the provisions of this act may carry, store or handle, free or at reduced rates, property for the United States, state, county or municipal governments, or for charitable purposes, or to or from fairs and exhibitions for exhibition thereat, and may carry, store or handle, free or at reduced rates, the household goods and personal effects of its employees and those entering or leaving its service and those killed or dying while in its service.

“Nothing in this act shall be construed to prohibit the making of a special contract providing for the mutual exchange of service between any railroad company and any telegraph or telephone company, where the line of such telegraph or telephone company is situated upon or along the railroad right of way and used by both of such companies.”

R. R. S. Sec. 10356 provides:

“No common carrier shall, directly or indirectly, by any special rate, rebate, drawback, or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered in the transportation of persons or property except as authorized in this act, than it charges, demands, collects or receives from any person or corporation for doing a like and contemporaneous service in the transportation of a like kind of traffic under the same or

substantially similar circumstances and conditions.”

R. R. S. Sec. 10422 provides:

“Complaint may be made by the commission of its own motion or by any person or corporation, chamber of commerce, board of trade, or any commercial, mercantile, agricultural or manufacturing society, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission: Provided, that no complaint shall be entertained by the commission except upon its own motion, as to the reasonableness of the schedule of the rates or charges of any gas company, electrical company, water company, or telephone company, unless the same be signed by the mayor, council or commission of the city or town in which the company complained of is engaged in business, or not less than twenty-five consumers or purchasers of such gas, electricity, water or telephone service: Provided, further, that when two or more public service corporations (meaning to exclude municipal and other public corporations) are engaged in competition in any locality or localities in the state, either may make complaint against the other or others that the rates, charges, rules, regulations or practices of such other or others with or in respect to which the complainant is in competition, are unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly, and upon such complaint or upon complaint of the commission upon

its own motion, the commission shall have power, after notice and hearing as in other cases, to, by its order, subject to appeal as in other cases, correct the abuse complained of by establishing such uniform rates, charges, rules, regulations or practices in lieu of those complained of, to be observed by all of such competing public service corporations in the locality or localities specified as shall be found reasonable, remunerative, non-discriminatory, legal, and fair or tending to prevent oppression or monopoly or to encourage competition, and upon any such hearing it shall be proper for the commission to take into consideration the rates, charges, rules, regulations and practices of the public service corporation or corporations complained of in any other locality or localities in the state.

“All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of complaints or grievances or misjoinder of parties; and in any review of the courts of orders of the commission the same rules shall apply and pertain with regard to the joinder of complaints and parties as herein provided: Provided, all grievances to be inquired into shall be plainly set forth in the complaint. No complaint shall be dismissed because of the absence of direct damage to the complainant.

“Upon the filing of a complaint, the commission shall cause a copy thereof to be served upon the person or corporation complained of, which shall be accompanied by a notice fixing the time when and place where a hearing will be had upon such complaint. The time fixed for such hearing shall not be less than ten days after the date of the service of such notice and complaint, excepting

as herein provided. Rules of practice and procedure not otherwise provided for in this act may be prescribed by the commission."

R. R. S. Sec. 10433 provides:

"When complaint has been made to the commission concerning the reasonableness of any rate, fare, toll, rental or charge for any service performed by any public service company, and the same has been investigated by the commission and the commission shall determine that the public service company has charged an excessive or exorbitant amount for such service, the commission may order that the public service company pay to the complainant the amount of the overcharge so found, with interest from the date of collection.

"If the public service company does not comply with the order for the payment of the overcharge within the time limited in such order, suit may be instituted in any court of competent jurisdiction to recover the same, and in such suit the findings and order of the commission shall be prima facie evidence of the facts therein stated. If the complainant shall prevail in such action, he shall be allowed a reasonable attorney's fee, to be fixed and collected as part of the costs of the suit. All complaints concerning overcharges shall be filed with the commission within two years from the time the cause of action accrues, and the petition for the enforcement of the order shall be filed in the court within one year from the date of the order of the commission."

R. R. S. Sec. 10435 provides:

"Upon determining the amount of overcharge due from any such public service company, the

director of public works may, if he deem it necessary to insure the prompt payment of the same to him, render judgment against such public service company for the amount of such overcharge. From and after the time that a transcript of said judgment is filed with and recorded and indexed by the county auditor as instruments relating to real and personal property are filed, recorded and indexed, it shall be a lien against all real and personal property of such public service company located in the county in which such transcript is filed, recorded and indexed. Such judgment may be enforced by execution and sale through the sheriff of any county in which is found any real or personal property belonging to such public service company, said execution to be delivered to the sheriff by the director of public works and the execution to be levied and the sale made by the sheriff in the same manner as levies and sales are made on judgments of the superior court."

R. R. S. Sec. 10436 provides:

"All refunds collected by the director of public works under this act shall immediately be paid to the person, firm or corporation entitled thereto less a fee of ten per cent on the amount collected, which shall be charged by the director of public works, deducted by him and paid into the public service revolving fund of the state treasury."

R. R. S. Sec. 10448, provides:

"In all actions between private parties and public service companies involving any rule or order of the commission, and in all actions for the recovery of penalties provided for in this act,

or for the enforcement of the orders or rules issued and promulgated by the commission, the said orders and rules shall be conclusive unless set aside or annulled in a review as in this act provided.”

R. R. S. Sec. 10450 provides:

“It shall be the duty of the commission to enforce the provisions of this act and all other acts of this state affecting public service companies, the enforcement of which is not specifically vested in some other officer or tribunal.”

R. R. S. Sec. 10776 provides:

“The directors of the departments of the state government created by this act shall respectively exercise such powers and perform such executive and administrative duties as are provided by this act, and receive such annual salaries payable in equal monthly installments, as the governor shall fix, not to exceed the sums provided by this act: Provided, that should the governor appoint any elective state officer as the director of any department created by this act, such elective officer shall receive as compensation for the extra duties imposed by this act only such sum as the governor shall fix, not to exceed the difference between the maximum salary provided by this act and the salary provided by law for such elective officer. Each officer whose office is created by this act shall, before entering upon the duties of his office, take and subscribe the oath of office prescribed by law for elective state officers, and file the same in the office of the secretary of state.”

R. R. S. Sec. 10779, provides:

“The department of public works shall be organized into and consist of three divisions, to be known respectively, as (1) the division of transportation, (2) the division of public utilities, and (3) the division of highways. The director of public works, shall have charge and general supervision of the department of public works, shall receive a salary of not to exceed six thousand dollars per annum, shall appoint a traffic and rate expert for the department, and shall have power to appoint and employ such clerical and other assistants as may be necessary for the general administration of the department.”

R. R. S. Sec. 10784 provides:

“The director of public works shall have the power, and it shall be his duty, through and by means of the division of public utilities:

(1) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the public service commission, except the powers and duties relating to common carriers of freight and passengers and the transportation of property and persons, those relating to the inspection, grading, and certification of grain, hay, peas, grain and hay products, rice, beans, and other similar articles, nitrates and other fertilizers and sulphur and other chemicals, those relating to the inspection of tracks, bridges, structures, machinery, equipment, and apparatus of railroad, street railways, gas plants, electrical plants, water systems, telephone lines, telegraph lines, and other public utilities with respect to the safety of employees, those relating to the administration and enforcement of laws providing for the protection of employees of railroads,

street railways, gas plants, electrical plants, water systems, telephone lines, telegraph lines, and other public utilities, and those relating to the enforcement, amendment, alteration, change, and making additions to rules and regulations concerning the operation, placing, erection, maintenance, and use of electrical apparatus, and the construction thereof;

(2) To exercise such other powers and perform such other duties as may be provided by law.”

R. R. S. Sec. 10896 provides:

“Wherever the salary or compensation of any appointive state officer or employee is fixed by statute, it may be hereafter increased or decreased in the manner provided by law for the fixing of the salaries or compensation of other appointive state officers or employees: Provided, however, that the provisions of this act shall not apply to the salary of the directors of departments provided for in this chapter.”

R. R. S. Sec. 10939-3 provides:

“The division of highways and the position of supervisor of highways are hereby abolished.”

L’s 1911, Ch. 117, Section 86 provides:

“Any complainant or any public service company affected by any order of the commission, and deeming it to be contrary to law, may, within thirty days after the service of the order upon him or it, apply to the superior court of the county in which such proceeding was instituted for a writ of review, for the purpose of having its reasonableness and lawfulness inquired into and determined. Such writ shall be made returnable

not later than thirty days from and after the date of the issuance thereof, unless upon notice to all parties affected a further time be fixed by the court, and shall direct the commission to certify its record in the case to the court. On such return day the cause shall be heard by the court, unless for good cause shown the same be continued. Said cause shall be heard by the court without the intervention of a jury on the evidence and exhibits introduced before the commission and certified to by it. Upon such hearing the superior court shall enter judgment either affirming or setting aside the order of the commission under review. In case said order is reversed by reason of the commission failing to receive testimony properly proffered, the court shall remand the cause to the commission, with instructions to receive the testimony so proffered and rejected, and enter a new order based upon the evidence theretofore taken, and such as it is directed to receive. The court may, in its discretion, remand any cause which is reversed by it to the commission for further action."

L's 1911, Ch. 117, Section 89 provides:

"Any public service company affected by any order of the commission, and deeming itself aggrieved, may, after the expiration of two years from the date of such order taking effect, petition the commission for a rehearing upon the matters involved in such order, setting forth in such petition the grounds and reasons for such rehearing, which grounds and reasons may comprise and consist of changed conditions since the issuance of such order, or by showing a result injuriously affecting the petitioner which was not considered or anticipated at the former hearing, or that the effect of such order has been such

as was not contemplated by the commission or the petitioner, or for any good and sufficient cause which for any reason was not considered and determined in such former hearing. Upon the filing of such petition, such proceedings shall be had thereon as are provided for hearings upon complaint, and such orders may be reviewed as are other orders of the commission: Provided, That no order superseding the order of the commission denying such rehearing shall be granted by the court pending the review. In case any order of the commission shall not be reviewed, but shall be complied with by the public service company, such petition for rehearing may be filed within six months from and after the date of the taking effect of such order, and the proceedings thereon shall be as in this section provided. The commission, may, in its discretion, permit the filing of a petition for rehearing at any time. No order of the commission upon a rehearing shall affect any right of action or penalty accruing under the original order unless so ordered by the commission.”

L’s 1911, Ch. 117, Section 14 provides:

“Every common carrier shall file with the commission and shall print and keep open to the public inspection schedules showing the rates, fares, charges and classification for the transportation of persons and property within the state between each point upon its route and all other points thereon; and between each point upon its route and all points upon every route leased, operated or controlled by it; and between each point on its route or upon any route leased, operated or controlled by it and all points upon the route of any other common carrier, whenever a through route and joint rate shall have been

established or ordered between any two such points. If no joint rate over a through route has been established, the several carriers in such through route shall file, print and keep open to the public inspection, as aforesaid, the separately established rates, fares, charges and classifications, applied to the through transportation. The schedules printed as aforesaid, shall plainly state the places between which property and persons will be carried, and shall also contain classification of passengers or property in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the commission may require to be stated, all privileges or facilities granted or allowed, and any rules or regulations which may in anywise change, affect, or determine any part, or the aggregate of, such aforesaid rates, fares and charges, or the value of the service rendered to the passenger, shipper or consignee. Such schedule shall be plainly printed in large type, and a copy thereof shall be kept by every such carrier readily accessible to and for inspection by the public in every station or office of such carrier where passengers or property are respectively received for transportation, when such station or office is in charge of any agent, and in every station or office of such carrier where passenger tickets for transportation or tickets covering sleeping or parlor car or other train accommodation are sold or bills of lading or receipts for property are issued. All or any of such schedules kept as aforesaid shall be immediately produced by such carrier for inspection upon the demand of any person. A notice printed in bold type and stating that such schedules are on file with the agent and open to inspection by any person and that the agent will assist any such person to de-

termine from such schedules any transportation rates or fares or rules or regulations which are in force shall be kept posted by the carrier in two public and conspicuous places in every such station or office. The form of every such schedule shall be prescribed by the commission and shall conform in the case of railroad companies as nearly as may be to the form of schedules required by the interstate commerce commission under the act of congress entitled 'An act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, and the acts amendatory thereof and supplementary thereto.

"The commission shall have power, from time to time, in its discretion, to determine and prescribe by order such changes in the form of such schedules as may be found expedient, and to modify the requirements of this section in respect to publishing, posting and filing of schedules either in particular instances or by general rule or order applicable to special or peculiar circumstances or conditions.

"The commission may, in its discretion, suspend the operation of this section in whole or in part as applied to vessels engaged in jobbing business not operating on regular routes."

L's 1911, Ch. 117, sec 91 provides:

"When complaint has been made to the commission concerning the reasonableness of any rate, fare, toll, rental or charge for any service performed by any public service company, and the same has been investigated by the commission, and the commission shall determine that the public service company has charged an excessive or exorbitant amount for such service, the commission may order that the public service company pay to the complainant the amount of the overcharge so found, with interest from the date of collection.

“If the public service company does not comply with the order for the payment of the overcharge within the time limited in such order, suit may be instituted in any court of competent jurisdiction to recover the same, and in such suit the findings and order of the commission shall be prima facie evidence of the facts therein stated. If the complainant shall prevail in such action, he shall be allowed a reasonable attorney’s fee, to be fixed and collected as part of the costs of the suit. All complaints concerning overcharges shall be filed with the commission within two years from the time the cause of action accrues, and the petition for the enforcement of the order shall be filed in the court within one year from the date of the order of the commission.”

L’s 1921, Ch. 7, Sec. 21 provides:

“The department of public works shall be organized into and consist of three divisions, to be known respectively as, (1) the division of transportation, (2) the division of public utilities, and (3) the division of highways. The director of public works, shall have charge and general supervision of the department of public works, shall receive a salary of not to exceed six thousand dollars per annum, shall appoint a traffic and rate expert for the department, and shall have power to appoint and employ such clerical and other assistants as may be necessary for general administration of the department.”

L’s 1921, Chap. 110, Sec. 1, provides:

“That the director of public works shall have power and it shall be his duty, upon complaint in writing being made to him, to determine the amount of overcharge made and refund due in

all cases where any public service company, as defined in chapter 117 of the Laws of 1911, charges an amount for any service rendered in excess of the lawful rate in force at the time such charge was made, or which may thereafter be declared to be the legal rate which should have been applied to the service rendered, and to determine to whom the overcharge should be paid: Provided, That this act shall not apply to controversies arising in relation to contracts in existence prior to the taking effect of said chapter 117 of the Laws of 1911.

Sec. 2. Upon determining the amount of overcharge due from any such public service company, the director of public works may, if he deem it necessary to insure the prompt payment of the same to him, render judgment against such public service company for the amount of such overcharge. From and after the time that a transcript of said judgment is filed with and recorded and indexed by the county auditor as instruments relating to real and personal property are filed, recorded and indexed, it shall be a lien against all real and personal property of such public service company located in the county in which such transcript is filed, recorded and indexed. Such judgment may be enforced by execution and sale through the sheriff of any county in which is found any real or personal property belonging to such public service company, said execution to be delivered to the sheriff by the director of public works and the execution to be levied and the sale made by the sheriff in the same manner as levies and sales are made on judgments of the superior court.

Sec. 3. All refunds collected by the director of public works under this act shall immediately be

paid to the person, firm or corporation entitled thereto less a fee of ten per cent on the amount collected, which shall be charged by the director of public works, deducted by him and paid into the public service revolving fund of the state treasury.

* * * * *

Sec. 6. Hearings to determine the amount of any refund due under this act shall be held in the same manner, the same procedure followed, and judgments and orders subject to review and appeal in the courts as is provided for hearings, procedure, reviews and appeals in matters before the public service commission of Washington under the provisions of chapter 117 of the Laws of 1911."

L's 1923, Chap. 62, Sec. 3, provides:

"The division of highways and the position of supervisor of highways are hereby abolished."

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*Attorneys for Appellee
and Cross-Appellant.*

In the

7

United States Circuit Court
of Appeals
For the Ninth Circuit

NORTHERN PACIFIC RAILWAY COMPANY,
a corporation,

Appellant and Cross-Appellee.

vs.

THE SAUK RIVER LUMBER COMPANY,
a corporation,

Appellee and Cross-Appellant.

ADDENDA TO CROSS-APPELLANT'S
BRIEF

WASHINGTON STATUTES CITED

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FILED

MAR 2 - 1938

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Rem. Rev. Stat., sec. 457 provides:

“Judgments hereafter rendered founded on written contracts, providing for the payment of interest until paid at a specified rate, shall bear interest at the rate specified in such contracts, not in any case, however, to exceed ten per cent per annum: Provided, that said interest rate is set forth in the judgment; and all other judgments shall bear interest at the rate of six per centum per annum from date of entry thereof.”

Rem. Rev. Stat., sec. 5841, (Laws of '07, p. 407, sec. 1) provides:

“Any corporation, partnership or individual who furnishes the public any goods, wares, merchandise, pledge, security, insurance or transportation of which the price, rate or tariff is by the law required to be published, shall, when any price, rate or tariff is charged in excess of the existing and established price, rate or tariff, refund to the person, partnership or corporation so overcharged, or to the assignee of such claim, the amount of such overcharge, and on failure so to do, the claim for such overcharge shall bear interest at the rate of eight per cent per annum until paid.”

Rem. Rev. Stat., sec. 7299 provides:

“Every loan or forbearance of money, goods, or thing in action shall bear interest at the rate of six per centum per annum where no different rate is agreed to in writing between the parties. The discounting of commercial paper, where the borrower makes himself liable as maker, guarantor or indorser, shall be considered as a loan for the purposes of this chapter.”

Rem. Rev. Stat., sec. 10350 provides:

“Every common carrier shall file with the commission and shall print and keep open to the public inspection schedules showing the rates, fares, charges and classification for the transportation of persons and property within the state between each point upon its route and all other points thereon; and between each point upon its route and all points upon every route leased, operated or controlled by it; and between each point on its route or upon any route leased, operated or controlled by it and all points upon the route of any other common carrier, whenever a through route and joint rate shall have been established or ordered between any two such points. If no joint rate over a through route has been established, the several carriers in such through route shall file, print and keep open to the public inspection, as aforesaid, the separately established rates, fares, charges and classifications, applied to the through transportation. The schedules printed as aforesaid, shall plainly state the places between which property and persons will be carried, and shall also contain classification of passengers or property in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the commission may require to be stated, all privileges or facilities granted or allowed, and any rules and regulations which may in any wise change, affect, or determine any part, or the aggregate of, such aforesaid rates, fares and charges, or the value of the service rendered to the passenger, shipper or consignee. Such schedule shall be plainly printed in large type, and a copy thereof shall be kept by every such carrier readily accessible to and for inspection by the public in every station or office of such carrier where passengers or property are respectively received for transportation, when such station or office is in charge of any agent, and in

every station or office of such carrier where passenger tickets for transportation or tickets covering sleeping or parlor cars or other train accommodation are sold or bills of lading or receipts for property are issued. All or any of such schedules kept as aforesaid shall be immediately produced by such carrier for inspection upon the demand of any person. A notice printed in bold type and stating that such schedules are on file with the agent and open to inspection by any person and that the agent will assist any such person to determine from such schedules any transportation rates or fares, or rules and regulations which are in force shall be kept posted by the carrier in two public and conspicuous places in every such station or office. The form of every such schedule shall be prescribed by the commission and shall conform in the case of railroad companies as nearly as may be to the form of schedules required by the interstate commerce commission under the act of congress entitled 'An act to regulate commerce,' approved February 4th, 1887, and the acts amendatory thereof and supplementary thereto.

"The commission shall have power, from time to time, in its discretion, to determine and prescribe by order such changes in the form of such schedules as may be found expedient, and to modify the requirements of this section in respect to publishing, posting and filing of schedules either in particular instances or by general rule or order applicable to special or peculiar circumstances or conditions.

"The commission may, in its discretion, suspend the operation of this section in whole or in part as applied to vessels engaged in jobbing business not operating on regular routes."

Rem. Rev. Stat., sec. 10352 provides:

"The names of the several carriers which are parties to any joint tariff shall be specified therein,

and each of the parties thereto, other than the one filing the same, shall file with the commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the commission; and where such evidence of concurrence or acceptance is filed, it shall not be necessary for the carriers filing the same also to file copies of the tariffs in which they are named as parties.

“Every common carrier shall file with the commission copies of every contract, agreement or arrangement with any other common carriers relating in any way to the transportation of persons or property.”

Rem. Rev. Stat., sec. 10354 provides:

“No common carrier shall charge, demand, collect or receive a greater or less or different compensation for transportation of persons or property, or for any service in connection therewith, than the rates, fares and charges applicable to such transportation as specified in its schedules filed and in effect at the time; nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified excepting upon order of the commission as hereinafter provided, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property except such as are regularly and uniformly extended to all persons and corporations under like circumstances. No common carrier shall, directly or indirectly, issue or give any free ticket, free pass or free or reduced transportation for passengers between points within this state, except its employees and their families, surgeons and physicians and their families, its officers, agents and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men’s Christian Associations, inmates of hospitals, charitable and ellemosynary (elemosy-

nary) institutions and persons exclusively engaged in charitable and ellemosynary (eleemosynary) work; to indigent, destitute and homeless persons and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the national homes or state homes for disabled volunteer soldiers and of soldiers' and sailors' homes, including those about to enter and those returning home after discharge; to necessary caretakers of livestock, poultry, milk and fruit; to employees of sleeping car companies, express companies, and to line-men of telegraph and telephone companies; to railway mail service employees, postoffice inspectors, customs inspectors and immigration inspectors; to newsboys on trains; baggage agents, witnesses attending any legal investigation in which the common carrier is interested; to persons injured in accidents or wrecks and physicians and nurses attending such persons; to the National Guard of Washington when on official duty, and students going to and returning from the state institutions of learning: Provided, That this provision shall not be construed to prohibit the interchange of passes for the officers, attorneys, agents and employees and their families, of railroad companies, steamboat companies, express companies and sleeping car companies with other railroad companies, steamboat companies, express companies and sleeping car companies, nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation: And provided, further, That this provision shall not be construed to prohibit the exchange of passes or franks for the officers, attorneys, agents, employees, and their families of such telegraph, telephone and cable lines, and the officers, attorneys, agents, employees, and their families of other telegraph, telephone or cable lines, or with railroad

companies, express companies or sleeping car companies: Provided, further, That the term 'employee' as used in this section shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed or dying in the employment of a carrier, those entering or leaving its service and ex-employees traveling for the purpose of entering the service of any such common carrier; and the term 'families' as used in this section shall include the families of those persons named in this proviso, also the families of persons killed and the widows during widowhood and minor children during minority, of persons who died while in the service of any such common carrier: And provided, further, That nothing herein contained shall prevent the issuance of mileage, commutation tickets or excursion passenger tickets: And provided, further, That nothing in this section shall be construed to prevent the issuance of free or reduced transportation by any street railroad company for mail carriers, or policemen or members of fire departments, city officers, and employees when engaged in the performance of their duties as such city employees.

"Common carriers subject to the provisions of this act may carry, store or handle, free or at reduced rates, property for the United States, state, county or municipal governments, or for charitable purposes, or to or from fairs and exhibitions for exhibition thereat, and may carry, store or handle, free or at reduced rates, the household goods and personal effects of its employees and those entering or leaving its service and those killed or dying while in its service.

"Nothing in this act shall be construed to prohibit the making of a special contract providing for the mutual exchange of service between any railroad company and any telegraph or telephone company,

where the line of such telegraph or telephone company is situated upon or along the railroad right of way and used by both of such companies.”

Rem. Rev. Stat., sec. 10433 provides:

“When complaint has been made to the commission concerning the reasonableness of any rate, fare, toll, rental or charge for any service performed by any public service company, and the same has been investigated by the commission, and the commission shall determine that the public service company has charged an excessive or exorbitant amount for such service, the commission may order that the public service company pay to the complainant the amount of the overcharge so found, with interest from the date of collection.

“If the public service company does not comply with the order for the payment of the overcharge within the time limited in such order, suit may be instituted in any court of competent jurisdiction to recover the same, and in such suit the findings and order of the commission shall be prima facie evidence of the facts therein stated. If the complainant shall prevail in such action, he shall be allowed a reasonable attorney’s fee, to be fixed and collected as part of the costs of the suit. All complaints concerning overcharges shall be filed with the commission within two years from the time the cause of action accrues, and the petition for the enforcement of the order shall be filed in the court within one year from the date of the order of the commission.”

Rem. Rev. Stat., sec. 10450 provides:

“It shall be the duty of the commission to enforce the provisions of this act and all other acts of this state affecting public service companies, the enforcement of which is not specifically vested in some other officer or tribunal.”

Rem. Rev. Stat., sec. 10784 provides:

“The director of public works shall have the power, and it shall be his duty, through and by means of the division of public utilities:

(1) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the public service commission, except the powers and duties relating to common carriers of freight and passengers and the transportation of property and persons, those relating to the inspection, grading, and certification of grain, hay, peas, grain and hay products, rice, beans, and other similar articles, nitrates and other fertilizers and sulphur and other chemicals, those relating to the inspection of tracks, bridges, structures, machinery, equipment, and apparatus of railroad, street railways, gas plants, electrical plants, water systems, telephone lines, telegraph lines, and other public utilities with respect to the safety of employees, those relating to the administration and enforcement of laws providing for the protection of employees of railroads, street railways, gas plants, electrical plants, water systems, telephone lines, telegraph lines, and other public utilities, and those relating to the enforcement, amendment, alteration, change, and making additions to rules and regulations concerning the operation, placing, erection, maintenance, and use of electrical apparatus, and the construction thereof;

“(2) To exercise such other powers and perform such other duties as may be provided by law.”

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*Attorneys for Appellee
and Cross-Appellant.*

In the 8
United States Circuit Court
of Appeals
For the Ninth Circuit

NORTHERN PACIFIC RAILWAY COMPANY,
a corporation,

Appellant and Cross-Appellee.

vs.

THE SAUK RIVER LUMBER COMPANY,
a corporation,

Appellee and Cross-Appellant.

**ADDENDA TO REPLY BRIEF OF
CROSS-APPELLANT**

WASHINGTON STATUTES CITED

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Northern Life Tower,
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FILED

MAR 2 - 1936

PAUL P. O'BRIEN,

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Rem. Bal. Code, sec. 5305 provides:

“Any corporation, partnership or individual who furnishes the public any goods, wares, merchandise, pledge, security, insurance or transportation of which the price, rate or tariff is by law required to be published, shall, when any price, rate or tariff is charged in excess of the existing and established price, rate or tariff, refund to the person, partnership or corporation so overcharged, or to the assignee of such claim, the amount of such overcharge, and on failure so to do, the claim for such overcharge shall bear interest at the rate of eight per cent per annum until paid.”

Rem. Code, sec. 5305 provides:

“Any corporation, partnership or individual who furnishes the public any goods, wares, merchandise, pledge, security, insurance or transportation of which the price, rate or tariff is by law required to be published, shall, when any price, rate or tariff is charged in excess of the existing and established price, rate or tariff, refund to the person, partnership or corporation so overcharged, or to the assignee of such claim, the amount of such overcharge, and on failure so to do, the claim for such overcharge shall bear interest at the rate of eight per cent per annum until paid.”

Rem. Comp. Stat., sec. 5841 provides:

“Any corporation, partnership or individual who furnishes the public any goods, wares, merchandise, pledge, security, insurance or transportation of which the price, rate or tariff is by law required to be published, shall, when any price, rate or tariff is charged in excess of the existing and established price, rate or tariff, refund to the person, partnership or corporation so overcharged, or to the assignee of such

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"Any corporation, partnership or individual who furnishes the public any goods, wares, merchandise, pledge, security, insurance or transportation of which the price, rate or tariff is by law required to be published, shall, when any price, rate or tariff is charged in excess of the existing and established price, rate or tariff, refund to the person, partnership or corporation so overcharged, or to the assignee of such claim, the amount of such overcharge, and on failure so to do, the claim for such overcharge shall bear interest at the rate of eight per cent per annum until paid."

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"When complaint has been made to the commission concerning the reasonableness of any rate, fare, toll, rental or charge for any service performed by any public service company, and the same has been investigated by the commission, and the commission shall determine that the public service company has charged an excessive or exorbitant amount for such service, the commission may order that the public service company pay to the complainant the amount of the overcharge so found, with interest from the date of collection.

If the public service company does not comply with the order for the payment of the overcharge within the time limited in such order, suit may be instituted in any court of competent jurisdiction to recover the same, and in such suit the findings and order of the commission shall be prima facie evi-

dence of the facts therein stated. If the complainant shall prevail in such action, he shall be allowed a reasonable attorney's fee, to be fixed and collected as part of the costs of the suit. All complaints concerning overcharges shall be filed with the commission within two years from the time the cause of action accrues, and the petition for the enforcement of the order shall be filed in the court within one year from the date of the order of the commission."

Rem. Rev. Stat., sec. 19350 provides:

"Every common carrier shall file with the commission and shall print and keep open to the public inspection schedules showing the rates, fares, charges and classification for the transportation of persons and property within the state between each point upon its route and all other points thereon; and between each point upon its route and all points upon every route leased, operated or controlled by it; and between each point on its route or upon any route leased, operated or controlled by it and all points upon the route of any other common carrier, whenever a through route and joint rate shall have been established or ordered between any two such points. If no joint rate over a through route has been established, the several carriers in such through route shall file, print and keep open to the public inspection, as aforesaid, the separately established rates, fares, charges and classifications, applied to the through transportation. The schedules printed as aforesaid, shall plainly state the places between which property and persons will be carried, and shall also contain classification of passengers or property in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the commission may require to be stated, all privileges or facilities granted or allowed, and any rules and regulations which may

in any wise change, affect, or determine any part, or the aggregate of, such aforesaid rates, fares and charges, or the value of the service rendered to the passenger, shipper or consignee. Such schedule shall be plainly printed in large type, and a copy thereof shall be kept by every such carrier readily accessible to and for inspection by the public in every station or office of such carrier where passengers or property are respectively received for transportation, when such station or office is in charge of any agent, and in every station or office of such carrier where passenger tickets for transportation or tickets covering sleeping or parlor cars or other train accommodation are sold or bills of lading or receipts for property are issued. All or any of such schedules kept as aforesaid shall be immediately produced by such carrier for inspection upon the demand of any person. A notice printed in bold type and stating that such schedules are on file with the agent and open to inspection by any person and that the agent will assist any such person to determine from such schedules any transportation rates or fares, or rules and regulations which are in force shall be kept posted by the carrier in two public and conspicuous places in every such station or office. The form of every such schedule shall be prescribed by the commission and shall conform in the case of railroad companies as nearly as may be to the form of schedules required by the interstate commerce commission under the act of congress entitled 'An act to regulate commerce,' approved February 4th, 1887, and the acts amendatory thereof and supplementary thereto.

The commission shall have power, from time to time, in its discretion, to determine and prescribe by order such changes in the form of such schedules as may be found expedient, and to modify the requirements of this section in respect to publishing, posting

and filing of schedules either in particular instances or by general rule or order applicable to special or peculiar circumstances or conditions.

The commission may, in its discretion, suspend the operation of this section in whole or in part as applied to vessels engaged in jobbing business not operating on regular routes."

L's 1911, p. 611, sec. 109.

"That chapter 81 of the Laws of 1905, chapter 226 of the Laws of 1907, chapter 142 of the Laws of 1907, and chapter 93 of the Laws of 1909, be and the same are hereby repealed."

L's 1911, p. 611, sec. 111.

"This act shall not affect pending actions or proceedings, civil or criminal, brought by or against the railroad commission of Washington, or by any other person or corporation, under the provision of chapter 81 of the Laws of 1905, or the acts amendatory thereof or supplemental thereto, but the same may be prosecuted or defended in the name of the railroad commission of Washington, or otherwise, with the same effect as though this act had not been passed. Any investigation, examination or proceeding undertaken, commenced or instituted by the railroad commission of Washington prior to the taking effect of this act may be conducted and continued to a final determination by the public service commission hereby created, in the same manner, under the same terms and conditions, and with like effect as though the railroad commission of Washington had not been abolished.

No cause of action arising under the provisions of chapter 81 of the Laws of 1905, or the acts amendatory thereof or supplementary thereto, or dependent thereon, shall abate by reason of the pass-

age of this act, whether a suit or action has been instituted thereon at the time of the taking effect of this act or not, but actions may be brought upon such causes in the same manner, under the same terms and conditions, and with the same effect as though said chapter (and the acts amendatory thereof or supplemental thereto) had not been repealed.

All findings, orders and rules made, issued or promulgated by the railroad commission of Washington under the provisions of chapter 81 of the Laws of 1905, or the acts amendatory thereof or supplemental thereto, shall continue in force and have the same effect as though this act had not been passed, and the public service commission hereby created is empowered to enforce said findings, orders and rules in the same manner and under the same conditions as though said findings, orders and rules had been made, issued or promulgated by the public service commission hereby created.”

L's 1911, p. 612, sec. 112.

“This act, in so far as it embraces the same subject-matter, shall be construed as a continuation of chapter 81 of the Laws of 1905, and the acts amendatory thereof and supplemental thereto, and the members of the railroad commission of Washington created by said act of 1905 shall during the remainder of their terms of office respectively constitute the public service commission created by this act. At the expiration of the term of each commissioner a commissioner shall be appointed under the provisions of this act.”

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